IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.393 OF 2004

Nalini S.Chagla ...Petitioner

Versus

Peacock Palace Co-op.Hsg.Soc.Ltd.

& Ors. ...Respondents

.....

Mr.S.M.Gorwadkar for Petitioner.

Mr.R.A.Shaikh for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 4, 2006.

P.C.

1. Heard Counsel for the parties.

2. At the outset, Mr.Shaikh for Respondents raised preliminary objection regarding the maintainability of the Petition. According to him, this Petition cannot proceed, as the subordinate Court has already opined that it was not necessary to make reference to the High Court for initiating contempt action. Reliance was placed on order dated 26th July 2004 to buttress this contention

which is at page 87 of the paper-book. The argument seems to be attractive. However, this argument cannot be accepted, for the reason, that merely because the subordinate Court failed or refused to make reference to the High Court for initiating contempt action, that does not preclude the party to approach this Court by way of formal Contempt Petition, which can be entertained by this Court on its own merits in accordance with law. Accordingly, this Petition cannot be thrown out on the basis of preliminary objection taken by Mr.Shaikh.

3. However, having heard Counsel for the parties for some time, it is seen that in the proceedings before the lower court, eventually, the Petitioner accepted the position as per the assurance given by the Respondent Society that her name will be placed on wait list for allotment of car parking space as and when car parking space becomes available to be allotted to her in due course. On that basis, Writ Petition filed by the Petition came to be disposed of on 22nd December 2005.

4. Once the Petitioner has accepted that position, in my opinion, it will be unnecessary to precipitate the matter further. Accordingly, this Petition is disposed of. Notices issued to Respondents stand discharged.

5. Needless to observe that the Respondent Society reiterates the assurance given before this Court as recorded in order dated 22nd December 2005 in Writ Petition No.1476 of 2005.

A.M.KHANWILKAR, J.